Supreme Court, U.S.
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No. 03-1606

In the Supreme Court of the United States

PAUL REVERE LIFE INS. CO. AND UNUMPROVIDENT CORP.,

Petitioners,

v.

GARY GREENBERG,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

SUPPLEMENTAL BRIEF OF PETITIONERS

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SUPPLEMENTAL BRIEF OF PETITIONERS

Petitioners filed their petition for certiorari on June 1, 2004, seeking review of the Ninth Circuit's decision affirming a $2.4 million punitive award. The petition asserts that the Ninth Circuit misapplied each of the three excessiveness guideposts articulated in *BMW of North America, Inc. v. Gore*, 517 U.S. 559 (1996), and clarified in *State Farm Mutual Automobile Insurance Co. v. Campbell*, 538 U.S. 408 (2003). More broadly, it contends that the lower courts routinely have been misapplying *State Farm* and cites as one of several illustrations the Utah Supreme Court's recent decision in the *State Farm* remand. *See* Pet. 17 (discussing *Campbell v. State Farm Mut. Auto. Ins. Co.*, 2004 WL 869188 (Utah Apr. 23, 2004)).

On June 2, respondent waived his right to file an opposition to the petition. The docket indicates that the Court is scheduled to consider the petition at its June 24, 2004, conference.

Petitioners have recently learned that State Farm intends to file a petition for certiorari, contending that the Utah Supreme Court's decision on remand misapplies this Court's decision in *State Farm*. That petition is due on July 22, 2004 — *i.e.*, after the date of the conference for the present petition.

We submit that there is a substantial possibility that this Court will agree with State Farm and issue an opinion summarily reversing the Utah Supreme Court. That opinion could well provide additional guidance regarding proper application of the Court's original decision in *State Farm*. If so, such an opinion would likely compel the conclusion that the $2.4 million punitive award against petitioners here is unconstitutionally excessive.

Accordingly, we respectfully suggest that the Court hold the petition and dispose of it in tandem with the petition that State Farm is expected to file on or before July 22, 2004.

Respectfully submitted.

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